

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 24 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0284-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
MARINA TACURI MOROCHO,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2008149111009DT

Honorable Paul J. McMurdie, Judge

REVIEW GRANTED; RELIEF DENIED

Gregan & Associates
By David W. Gregan

Mesa
Attorneys for Petitioner

V Á S Q U E Z, Presiding Judge.

¶1 Marina Morocho petitions this court for review of the trial court's order summarily denying her request for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb the court's ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶4, 166 P.3d 945, 948 (App. 2007). Morocho has not met her burden of demonstrating such abuse here.

¶2 Morocho pled guilty in 2008 to solicitation to commit smuggling. The trial court suspended the imposition of sentence and placed Morocho on a six-month term of unsupervised probation. In 2012, Morocho sought post-conviction relief, arguing that her failure to timely seek post-conviction relief was due to counsel’s inadequate representation, as was her decision “to accept a plea agreement that she did not understand” because counsel did not explain it to her and she did not speak English. She claimed counsel had done nothing but inform her she had to plead guilty in order to “get out of detention,” noting that counsel had made no effort to ascertain whether she had a valid defense to the charge, or even whether she understood the charge, and failed to inform her of any immigration consequences that could result from her conviction. She further asserted that she was unaware of her right to seek post-conviction relief and that counsel “failed to inform [her] that she had the right to file a motion for post-conviction relief, and that motion had an expiration date.” Finally, Morocho claimed the trial court failed to “go over the factual basis with” her at her change-of-plea hearing.

¶3 The trial court summarily denied relief. It concluded that Morocho’s claims of ineffective assistance of counsel could not be raised in an untimely proceeding. It also rejected Morocho’s claim that her failure to timely seek post-conviction relief was without fault on her part. *See* Ariz. R. Crim. P. 32.1(f). The court noted that Morocho had been informed through an interpreter of her right to pursue post-conviction relief and had signed a notice informing her of those rights.

¶4 On review, Morocho first argues the trial court erred in rejecting her claim pursuant to Rule 32.1(f). She again asserts that counsel failed to adequately inform her of

her Rule 32 rights. But she does not meaningfully address the court’s conclusion that she had been informed of those rights at her change-of-plea hearing. The minute entry from that hearing states an interpreter was present and that Morocho had been advised “of all pertinent constitutional rights and rights of review.” Additionally, Morocho signed a notice describing those rights, despite the fact the notice was only in English. Although Morocho claimed below that she was unaware of her right to post-conviction relief, and even if Morocho’s counsel failed to inform her of her right to seek post-conviction relief, in order to obtain post-conviction relief, she must do more than contradict what the record plainly shows. *See State v. Jenkins*, 193 Ariz. 115, ¶ 15, 970 P.2d 947, 952 (App. 1998) (defendant’s claimed unawareness that sentence “must be served without possibility of early release” not colorable when “directly contradicted by the record”). And Morocho’s recent discovery that she might have some basis to seek post-conviction relief does not excuse her failure to timely do so. *See State v. Poblete*, 227 Ariz. 537, ¶ 7, 260 P.3d 1102, 1104-05 (App. 2011).

¶5 Morocho additionally claims—for the first time on review—that she “did not understand any admonishments given by the judge regarding her Rule 32 rights.” But we do not address claims raised for the first time in a petition for review. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980). For these reasons, we find no error in the trial court’s determination that Morocho was not entitled to relief pursuant to Rule 32.1(f). The trial court also did not err in rejecting her claim of ineffective assistance of counsel. That claim cannot be raised in an untimely post-conviction proceeding. *See Ariz. R. Crim. P. 32.2, 32.4*. And, although the court did not directly

address her claim that her plea colloquy was flawed, that claim is barred for the same reason.

¶6 Although review is granted, relief is denied.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Michael Miller
MICHAEL MILLER, Judge